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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,836	06/03/2002	Motoki Kato	450101-03301	2408
20999	7590	08/09/2006	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			DUNN, MISHAWN N	
			ART UNIT	PAPER NUMBER
			2621	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/018,836	KATO ET AL.	
	Examiner	Art Unit	
	Mishawn N. Dunn	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/ci</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-12 recite the limitation "the time lapse." There is insufficient antecedent basis for this limitation in the claims.
3. Claim 4 recites the limitation "the VBV buffer." There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. Claim 9-12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A program is neither a computer component nor a statutory process..

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando et al. (US Pat. No. 5,717,641).

8. Consider claim 1. Ando et al. teaches an encoding apparatus for encoding picture data, comprising: an encoder for encoding said picture data at a variable rate (col. 2, lines 53-54); and a controller for managing control so that the amount of picture coding data will be substantially proportionate to the time lapse (col. 4, lines 9-67; fig. 1).

9. Consider claim 2. Ando et al. teaches the encoding apparatus according to claim 1 wherein said controller manages control so that stuffing bytes will be encoded if the amount of said picture coding data generated per unit time is less than a preset value (col. 4, lines 9-67).

10. Consider claim 3. Ando et al. teaches the encoding apparatus according to claim 2 wherein said controller verifies whether or not the stuffing bytes will be encoded depending on the amount of data generated in encoding respective pictures (col. 4, lines 9-67).

11. Consider claim 5. Ando et al. teaches the encoding apparatus according to claim 1 wherein said controller manages control to perform encoding in an encoding mode in which the amount of said picture coding data is substantially proportionate to the lapse of time or in a routine encoding mode (col. 4, lines 9-67).

12. Consider claim 6. Ando et al. teaches the encoding apparatus according to claim 5 wherein said controller generates additional information indicating whether or not the

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encoding mode is such encoding mode in which the amount of said picture coding data is substantially proportionate to the lapse of time (col. 4, lines 9-67).

13. Method claim 7 is rejected using similar reasoning as corresponding apparatus claim 1.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US Pat. No. 5,717,641) in view of Isnardi (US Pat. No. 6,687,384).

17. Consider claim 4. Ando et al. teaches all the claimed limitations as stated above, except the encoding apparatus according to claim 2 wherein said controller manages

control of encoding the stuffing bytes so that no overflow will be produced in the VBV buffer.

However, Isnardi et al. discloses a controller manages control of encoding the stuffing bytes so that no overflow will be produced in the VBV buffer (col. 11, lines 11-38).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to encode the stuffing bytes, in order to keep the VBV buffer from overflowing.

18. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US Pat. No. 5,717,641) in view of Official Notice.

19. Consider claims 8 and 9. Ando et al. teaches all the claimed limitations as stated above, except a computer-readable medium encoded with a computer program.

Examiner takes official notice that it is well known to have a computer-readable medium encoded with a computer program.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to provide a computer-readable medium encoded with a computer program, in order to execute the instructions set forth.

20. Claims 10-12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ando et al. (US Pat. No. 5,717,641) in view of Official Notice in further view of Kono (US Pat. No. 5,305,296).

21. Consider claim 10. Ando et al. teaches all the claimed limitations as stated above, except a recording medium having picture data recorded thereon, said recording medium having recorded thereon an AV stream file including said picture data and audio data associated with said picture data; and a flag indicating the recording mode of said AV stream file.

Examiner takes official notice that it is well known to have a computer-readable medium encoded with a computer program.

In addition, Kono discloses a flag indicating the recording mode of said AV stream file (col. 11, lines 56-59).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to use, to provide a computer-readable medium encoded with a computer program and a flag indicating the recording mode of said AV stream file, in order to execute the instructions set forth and allow the status of the recording process to be known.

22. Consider claim 11. Ando et al. teaches all the claimed limitations as stated above, except that the flag is a time controlled flag.

However, Kono discloses a time controlled flag (col. 11, lines 56-59).

23. Consider claim 12. Ando et al. teaches all the claimed limitations as stated above, except that the flag indicates that the mode is such a mode in which the recording is made such that the file size will be proportionate to the time elapsed as from the time of recording.

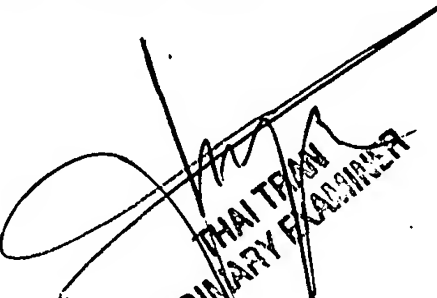
However, Kono discloses that the flag indicates that the mode is such a mode in which the recording is made such that the file size will be proportionate to the time elapsed as from the time of recording (col. 11, lines 56-59).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mishawn N. Dunn whose telephone number is 571-272-7635. The examiner can normally be reached on Monday - Friday 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


THAI TRAN
PRIMARY EXAMINER